

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE JUUL LABS, INC., MARKETING,
SALES PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

Case No. 19-md-02913-WHO

**DECLARATION OF DENA SHARP IN
SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION**

This Document Relates to:
CLASS ACTIONS

PROVISIONALLY FILED UNDER SEAL

1 I, Dena C. Sharp, hereby declare under penalty of perjury:

2 1. I am a partner at Girard Sharp LLP, am admitted to practice in the Northern District
3 of California and serve as co-lead counsel in this matter. I submit this declaration in support of
4 Plaintiffs' Motion for Class Certification.

5 2. The Second Amended Consolidated Class Action Complaint, ECF 1135, asserts
6 claims under federal law and the law of forty-seven states.¹ Only Plaintiffs' federal law and
7 California state law claims are, however, at issue in this motion. *See* ECF 1488, Ex. 1 (Case/Trial
8 Schedule). Plaintiffs are prepared to move forward with their claims under any other jurisdiction
9 at any time the Court deems appropriate.

10 **Named Plaintiffs**

11 3. The proposed class representatives for Plaintiffs' federal and California law claims
12 are Bradley Colgate, Joseph DiGiacinto on behalf of C.D., Lauren Gregg, Tyler Krauel, and Jill
13 Nelson on behalf of L.B. Based on my experience in class action litigation and the information
14 available to me, my opinion is that each plaintiff would adequately serve as a class representative.
15 Information concerning each plaintiff is found below.

16 4. ***Bradley Colgate:*** Mr. Colgate was one of the original plaintiffs in this litigation and
17 was included as a named plaintiff in the April 26, 2018, complaint filed in *Colgate v. JUUL Labs,*
18 *Inc.*, Case No. 18-cv-2499-WHO (N.D. Cal.). He has continued to serve as a named plaintiff in
19 each of the *Colgate* and MDL consolidated complaints. Mr. Colgate first produced documents in
20 July 2019, as part of the *Colgate* matter. He subsequently produced documents in the MDL on
21 April 9, 2021, and April 13, 2021. Mr. Colgate responded to Defendants' interrogatories on August
22 3, 2020, and subsequently amended his responses to provide additional as a result of the parties'
23 discovery agreements on December 21, 2020, and April 15, 2021. He is scheduled to be deposed
24 on May 13, 2021. Mr. Colgate purchased JUUL products from 7-Eleven and numerous other gas
25 stations and retail locations throughout California. *See* Plaintiff Bradley Colgate's Second
26

27
28 ¹ While the SCAC includes claims brought under the laws of Delaware, the District of Columbia,
Idaho, and North Dakota, those claims have been dismissed without prejudice. ECF 1694 at 30.

1 Amended Objections and Responses to JUUL Labs, Inc.'s First Set of Interrogatories to Lead Class
2 Action Plaintiffs, Response to Interrogatory No. 11.

3 5. **Joseph DiGiacinto on behalf of C.D.:** Plaintiff DiGiacinto brings his claim on
4 behalf of her minor son, C.D. Like Mr. Colgate, Mr. DiGiacinto and C.D. have been a part of this
5 case since the *Colgate* matter, first being named as a plaintiff in the January 30, 2019, Consolidated
6 Amended Class Action Complaint in the *Colgate* action. Mr. DiGiacinto produced documents on
7 behalf of C.D. as part of the *Colgate* litigation in July 2019. He produced documents in the MDL
8 on April 9, 2021, responded to Defendants' interrogatories on August 3, 2020, and subsequently
9 amended his responses to provide additional as a result of the parties' discovery agreements on
10 December 21, 2020, and April 22, 2021. He is scheduled to be deposed on May 3, 2021, and C.D.
11 is scheduled to be deposed on May 4, 2021. C.D. purchased JUUL products from smoke shops in
12 Rohnert Park and Petaluma, California. *See* Plaintiff Joseph DiGiacinto's Second Amended
13 Objections and Responses to JUUL Labs, Inc.'s First Set of Interrogatories to Lead Class Action
14 Plaintiffs, Response to Interrogatory No. 11.

15 6. **Lauren Gregg:** Ms. Gregg is 20 years old and is a named class representative in the
16 November 12, 2020, Second Amended Consolidated Class Action Complaint. She also has a
17 personal injury case, which she first filed on October 14, 2020, and is currently one of the personal
18 injury plaintiffs in the bellwether pool. Ms. Gregg produced documents beginning April 15, 2021.
19 She responded to Defendants' interrogatories in the class action case on December 21, 2020. Ms.
20 Gregg is scheduled to be deposed on April 30, 2021. She purchased JUUL products from Smoke
21 Shop of Chester, Vape Doctor, Shell, Smoke Depot, ebay.com, and directly from juul.com. *See*
22 Plaintiff Lauren Gregg's Objections and Responses to JUUL Labs, Inc.'s First Set of
23 Interrogatories to Lead Class Action Plaintiffs, Response to Interrogatory No. 11 and Plaintiff
24 Lauren Gregg's Personal Fact Sheet.

25 7. **Tyler Krauel:** Mr. Krauel is 21 years old and is a named class representative in the
26 November 12, 2020, Second Amended Consolidated Class Action Complaint. Mr. Krauel
27 produced documents on April 9, 2021, responded to Defendants' interrogatories on December 21,
28 2020, and amended his responses to provide additional as a result of the parties' discovery

1 agreements April 15, 2021. He is scheduled to be deposed on May 11, 2021. He purchased JUUL
 2 products from various retailers in or around St. Pete Beach, Florida. *See* Plaintiff Tyler Krauel's
 3 Amended Objections and Responses to JUUL Labs, Inc.'s First Set of Interrogatories to Lead Class
 4 Action Plaintiffs, Response to Interrogatory No. 11.

5 8. ***Jill Nelson on behalf of L.B.***: Plaintiff Nelson brings her claim on behalf of her
 6 minor daughter, L.B. Ms. Nelson has been a part of the litigation since she was included in the
 7 June 12, 2018 First Amended Class Action Complaint in the *Colgate* action. Ms. Nelson produced
 8 documents on behalf of L.B. in July 2019, as part of the *Colgate* matter. She produced documents
 9 in the MDL on April 9, 2021, responded to Defendants' interrogatories on August 3, 2020, and
 10 subsequently amended her responses to provide additional as a result of the parties' discovery
 11 agreements on December 21, 2020, and April 24, 2021. She is scheduled to be deposed on May
 12 13, 2021, and L.B. is scheduled to be deposed on May 14, 2021. L.B. purchased JUUL products
 13 from gas stations and convenience stores in or around San Diego, California. *See* Plaintiff Jill
 14 Nelson's Second Amended Objections and Responses to JUUL Labs, Inc.'s First Set of
 15 Interrogatories to Lead Class Action Plaintiffs, Response to Interrogatory No. 11.

16 **Class Counsel**

17 9. On December 20, 2019, the Court appointed Sarah London of Lieff Cabraser
 18 Heimann & Bernstein LLP, Dena Sharp of Girard Sharp LLP, Dean Kawamoto of Keller
 19 Rohrback, and Ellen Relkin of Weitz & Luxenberg to serve as Co-Lead Counsel in the MDL,
 20 along with a group of highly qualified lawyers to serve on the Plaintiffs' Steering Committee and
 21 as liaisons for other government entity plaintiffs and the related state court actions. ECF 341 at 1-
 22 2. Since that time, class counsel have worked diligently and collaboratively to advance the interests
 23 of the proposed classes. Among other things, Co-Lead Counsel and the PSC have:

- 24 • Drafted Master Pleadings
- 25 • Opposed multiple waves of motion to dismiss, which the Court largely denied
- 26 • Negotiated nearly a dozen case management orders, including protocols and the
- 27 appointment of three Special Masters to facilitate progress of the litigation
- 28

- Directed complex fact discovery, including collection and review of hundreds of thousands of documents
- Conducted and scheduled over forty depositions
- Issued over 150 third-party subpoenas
- Retained and developed subject matter experts
- Prepared bellwether cases for trial

10. Class counsel have collectively spent tens of thousands of hours pursuing the claims of all plaintiffs in the MDL, and are prepared to continue devoting whatever time and resources are needed to bring this matter to a successful resolution. Co-Lead Counsel's resumes are attached as Exhibit 1 (Lief Cabraser Heimann & Bernstein LLP), Exhibit 2 (Girard Sharp LLP), Exhibit 3 (Keller Rohrback), and Exhibit 4 (Weitz & Luxenberg).

Documents

11. A true and correct copy of documents (email and attached) Bates numbered INREJUUL_00057289 - INREJUUL_00057296 is attached as Exhibit 5.

12. A true and correct copy of Robert K. Jackler et al., *JUUL Advertising Over Its First Three Years on the Market*, Stan. Rsch. into the Impact of Tobacco Advert. (2019), is attached as Exhibit 6, and is available at http://tobacco.stanford.edu/tobacco_main/publications/JUUL_Marketing_Stanford.pdf

13. A true and correct copy of documents (email and attached) Bates numbered MDL_RV0003986 - MDL_RV0004012 is attached as Exhibit 7.

14. A true and correct copy of a document Bates numbered JLI00365709 is attached as Exhibit 8.

15. A true and correct copy of a document Bates numbered ALGAT0005400533 is attached as Exhibit 9.

16. A true and correct copy of Jidong Huang et al., *Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market*, Tobacco Control (May 31, 2018) is attached as Exhibit 10, and is available at <https://tobaccocontrol.bmj.com/content/28/2/146.full>.

17. A true and correct copy of a September 11, 2018 Statement from FDA Commissioner Scott Gottlieb, M.D., on New Steps to Address Epidemic of Youth E-Cigarette Use is attached as Exhibit 11.

18. A true and correct copy of Karen Cullen et al., *e-Cigarette Use Among Youth in the United States, 2019*, 322 JAMA 2095 (2019) is attached as Exhibit 12, and is available at <https://jamanetwork.com/journals/jama/fullarticle/2755265>.

19. A true and correct copy of is a document Bates numbered JLI01051696 is attached as Exhibit 13.

20. A true and correct copy of excerpts of the Rule 30(b)(6) deposition of Altria (designee Brian Blaylock) is attached as Exhibit 14.

21. A true and correct copy of excerpts of an Excel spreadsheet Bates numbered JLI01388029 is attached as Exhibit 15. JLI01388029 was produced natively as an Excel file with 22 different tabs. The first page of the excerpt is the first tab, titled "Cover." The second and third pages of the excerpt are the second tab, titled "Summary." The second and third pages of the excerpt should be placed next to one another to reflect the information as it appears in the Summary tab of the native Excel file.

Expert Reports

22. A true and correct copy of the expert declaration of Hal J. Singer, Ph.D., is attached as Exhibit 16.

23. A true and correct copy of the expert declaration of Professor Anthony Pratkanis is attached as Exhibit 17.

24. A true and correct copy of the expert declaration of Professor John Chandler is attached as Exhibit 18.

25. A true and correct copy of the expert declaration of Dr. Sherry Emery is attached as Exhibit 19.

26. A true and correct copy of the expert declaration of Alan Shihadeh, SC.D., is attached as Exhibit 20.

1 **Trial Plan**

2 27. Plaintiffs' claims can effectively be managed as class actions at trial. Although
3 some of their claims (such as claims under the California Unfair Competition Law) seek equitable
4 relief while others (such as claims under the California Consumer Legal Remedies Act) seek
5 damages, all claims can effectively be litigated in a single proceeding. Plaintiffs' proposal Trial
6 Management Plan, which details how Plaintiffs can efficiently try all of their class claims in a
7 single proceeding, is attached as Exhibit 21.

8
9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct. Executed this 28th day of April 2021, at San Francisco, California.

11 /s/ Dena C. Sharp

12 Dena C. Sharp

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will automatically send notification of the filing to all counsel of record. I also caused a copy of the under-seal documents to be served via electronic mail on defense counsel.

By: /s/ Dena C. Sharp
Dena C. Sharp